82-1625

NUMBER A863

SUPREME COURT OF THE
UNITED STATES OF
AMERICA

RALPH BOUMA and MRS. RALPH BOUMA

Petitioners

vs

LARRY C. IVERSON, INC.,

Respondent

ON PETITION FOR WRIT
OF CERTIORARI FROM
THE SUPREME COURT OF
THE STATE OF MONTANA

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI
VOLUME II

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APPENDIX F

IN THE DISTRICT COURT THE THE NINTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF PONDERA

* *

UNITED BANK OF PUEBLO (formerly Arkansas Valley Bank), a colorado banking corporation,

Plaintiff,

v

LARRY C. IVERSON, INC., a Montana Corporation GARL O. IVERSON, MABEL IVERSON, LARRY C. IVERSON, CONNIE FULTON, JOHN C. TREADAWAY, J. MILTON KRULL, M, DEAN JELLISON, AND FARMERS STATE BANK,a Montana banking corporation

Defendants

No. 8221

FARMERS STATE BANK OF CONRAD, a Montana banking corporation, and STANLEY M. SWAINE, Trustee of the Estates of Gilbert F. Keierleber and Irene A. Keierleber, Bankrupt	)	
Plaintiffs,	)	No. 8073
vs	)	
LARRY C. IVERSON, INC., a Montana Corporation, et al,	)	
Defendants.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This cause orginally came on for hearing, in Cause No. 8221, on August 12, 1969; with the consent of all parties appearing in respect to the above entitled causes, and upon motions of plaintiffs in Cause No. 8073,

the above entitled causes were consolidated for consideration and disposition thereof by this Court, sitting without a jury; by consent of all appearing parties, the record of proceedings commenced with incorporation for purposes of trial of proceedings held in Cause No. 8221 on August 12 and 13, 1969, and subsequent proceedings in Cause No. 8221, together with the consolidated proceedings adverted to, commencing with October 5, 1970, and finally concluding January 21, 1971.

Plaintiff, United Bank of Pueblo (formerly Arkansas Valley Bank) has been represented at all stages by Cresap S. McCracken, Esq., of the firm of Church, Harris, Johnson and William, and James V. Phelps. Esq., Mr. Phelps having been admitted specially for the purposes of appearances in this cause.

Farmers State Bank (defendant and cross-complainant in Cause No. 8221 and plaintiff in Cause No. 8073) has been represented at all times by Randall Swanberg, Esq., and Ray F. Koby, Esq., of the firm of Swanberg, Koby and Swanberg.

In the main, defedant John C. Treadaway has appeared pro se, although he has at different times and for different purposes been represented by attorneys M. Dean Jellison, Esa., of Kalispell, Montana, Douglas Peacock, Esq., of Phoenix, Arizona, and John Baynuk, Esq., of Shelby, Montana. Defendant J. Milton Krull has been represented by M. Dean Jellison, Esq., of Kalispell, Montana, until that attorney requested to be relieved, and was relieved by this Court, as appears in an order made October 21, 1970, reflecting action taken as of October 6, 1970.

reflecting action taken as of October 6, 1970. Since that date, Mr. Krull has appeared pro se.

Defendants Larry C. Iverson, Inc., Carl O. Iverson, Mabel Iverson and Larry C. Iverson have been represented by M. Dean Jellison, Esq., up to October 6, 1970, and such representation of Mabel Iverson (deceased) continues to the extent provided by the order of this Court made October 21, 1970.

Defendant M. Dean Jellison, Esq., an attorney, has represented himself.

Michael Bosco, Esq., an attorney of Phoenix, Arizona, was originally jointed as a party, but upon his desclaimer, he was dismissed.

Defendant Connie Iverson Fulton has appeared herein by her counsel Sandall, Moses and Cavan of Billings, Montana, but she moved the Court

for an order to be dismissed from this action, and upon the representation of her counsel that she had no interest in the outcome of this action, and there being no objection by any other party, the motion was granted during the course of proceedings.

Stanley M. Swaine, Esq., Trustee of the Estates of Gilbert F. Keierleber and Irene A. Keierleber, bankrupts, and co-plaintiff in Cause No. 8073, has been represented herein by the firm of Swanberg, Koby and Swanberg.

In addition, defendants Larry C. Iverson, Inc., Carl O. Iverson, Mabel Iverson, Larry C. IVerson, John C. Treadaway and J. Milton Krull have been represented from time to time by Douglas Peacock, an attorney of Phoenix, Arizona, Dale Keil, Esq., an attorney of Conrad, Montana,

and John Bayuk, Esq., an attorney of Shelby, Montana, though each attorney has not on all occasions represented all defendants.

In the course of the proceedings, both oral and documentary evidence was received by the Court; proposed findings of fact, conclusions of law, and briefs, as well as reply briefs, were filed; and such briefs as the parties have desired to file within the time allowed having been filed, and such proposed findings of fact and conclusions of law as the parties desired having been furnished; and the Court having been fully apprised, makes the findings of fact and conclusions of law and order, as hereinafter set forth;

For convenience, United Bank of Pueblo will be referred to as "United Bank"; Farmers State Bank of Conrad (the same as Farmers State Bank, a Montana banking corporation) and Stanley M. Swaine, will be

referred to as "Farmers Bank" and "the Trustee"; Larry C. Iverson, Inc., will be referred to as "the Corporation"; Carl O. Iverson, Mabel Iverson, Larry C. Iverson, Connie Fulton, Gilbert F. Keierleber and Irene A. Keierleber will be referred to by their first names; and John C. Treadaway and J. Milton Krull will be referred to by their last name.

FINDINGS OF FACT

1. That the correct corporate name of United Bank at the time of the commencement of Cause NO. 8221, was Arkansas Valley Bank; that since commencement of said action, the name of United Bank has been changed to and its correct corporate name is United Bank of Pueblo; that said United Bank was at all pertinent times a banking corporation organized and existing under the laws of the State of Colorado, with principal place of business at Pueblo in said State;

2. That at all pertinent times Farmers Bank was a Montana banking corporation, organized and existing under the laws of the State of Montana, with its principal place of business at Conrad, Montana.

3. That the Corporation is a Montana corporation organized and existing under the laws of the State of Montana, with its stated principal place of business at Ledger, Montana, with certificate of incorporation issued by the Secretary of State on the 17th day of July, 1964; that it was, and is, capitalized for $500,000.00 divided into five thousand shares of a single class or common stock of $100.00 par value each, and is organized to be govenrned in its business by a board of directors consisting of three persons empowered to elect officers to perform the executive functions of the corporations; that unless other

wise specifically recited, all references to capital stock hereinafter contained, are to capital stock of the Corporation.

4. That on or about August 19, 1964, a total of 2,523 shares of stock of the Corporation were issued to the following named persons in certificates numbered and representing shares in the Corporation (hereinafter referred to collectively as the "original issue") as follows:

STOCKHOLDER	CERT.#	NO. OF SHARES
Larry C. Iverson	1	463
Linda M. Iverson	2	1
Mabel Iverson	3	58
Mabel Iverson	4	450
Irene A. Keierleber	5	300

STOCKHOLDER	CERT.#	NO. OF SHARES
Gilbert F. Keierleber	6	300
Connie Iverson Fulton	7	440
Darrell L. Brown	8	1
Carl O. Iverson	9	450
Carl O. Iverson	10	60
	TOTAL SHARES	2,523

5. That on or about November 22, 1965, the following certificates were issued to replace lost certificates representing share in the Corporation:

STOCKHOLDER	CERT. #	ISSUED TO REPLACE	NO. OF SHARES
Irene A. Keierleber	11	5	300
Mabel Iverson	12	3	58
Carl O. Iverson	13	10	60

That the ownership of said duplicate shares was the same as the ownership of original shares, as hereinabove set forth;

6. That about December 1964, Carl, Mabel, Gilbert and Irene individually and as officers of the Corporation, hired Krull and Treadaway as business managers for themselves as individuals, and for the Corporation; that the affairs of the Corporation have, ever since said employment to the time of appointment of receiver pendente lite in Cause 8221 (with the exception of the period of time of less than one month duration when a receiver was appointed for the Corporation in Cause 7779 of this Court) have been under the management, supervision and control of Krull and Treadaway, either as business managers or consultants, or as purported officers, directors and stockholders of the Corp-

* Indicates paragraph amended by court's grant of an exception.

oration;

7. That on or about March 16, 1967, Farmers Bank became the owner of 450 shares of Mabel's stock of the Original Issue and 450 shares of Carl's stock of the Original Issue; that said ownership was acquired as a result of pledge of said shares by Carl and Mabel to Farmers Bank and possession of the certificates representing said shares by Farmers Bank, under date of September 17, 1964; action to foreclose said pledges reduced to judgment of this Court against Carl and Mabel authorizing foreclosure of pledges and resulting pledge foreclosure and sheriff's sale to Farmers Bank at March 16, 1967; that by reason of an agreement between Farmers Bank and the Corporation entered into between the time of the judgment of Farmers Bank against Carl

and Mabel and sheriff's sale on foreclosure, said agreement being received in evidence as Exhibit 63, the Corproation redeemed and became equitable owner of 182.7 shares of the 900 shares of Carl and Mabel pledged to Farmers Bank, as treasury shares;

8. That Gilbert and Irene were adjudicated bankrupts on or about January 24, 1966; that the Trustee by virtue of the provisions of Title 11, U.S.C. Section 110, became the owner of the said 300 shares of capital stock of Gilbert and 300 shares of capital stock of Irene; that Gilbert's said 300 shares of capital stock are subject to the pledge thereof to Farmers Bank, which holds the certificate for said shares under pledge, and the judgment authorizing foreclosure of said pledge against Gilbert in Cause 7779 of this Court;

9. That on July 21, 1966, at Helena, Montana, at a duly and regularly held sheriff's sale, the United Bank purchased and became the owner of all stock of the Corporation then owned by Carl and Mabel, in partial satisfaction of judgment in an action against Carl and Mabel commenced by United Bank in Cause No. 7708 of this Court; that the stock so acquired by the United Bank consisted of certificates numbered 3 of Mabel, comprising 58 shares, and 10 of Carl, comprising 60 shares; that in addition, the United Bank acquired a pledge interest owned by Carl and Mabel in certificate number 7, owned by Connie Iverson Fulton, comprising 440 shares;

10. That Farmers Bank, the Trustee and United Bank all made demands upon the Corporation, Krull and Treadaway for issuance of

stock certificates to them; that such demands were fruitless; that Krull and Treadaway, acting for themselves or the Corporation have never recognized the claims of Farmers Bank, the Trustee or United Bank to ownership of any stock in the Corporation;

11. That of the Original Issue, certificate number 2 issued to Linda M. Iverson for one share of stock in the Corproation, and certificate number 8 issued to Darrell L. Brown for one share of stock in the Corporation have been surrendered to the Corporation, and are treasury shares;

12. That certificate number 1 issued to Larry C. Iverson for 463 shares was pledged to Farmers State Bank, to secure a note of Larry to Farmers Bank; that prior to March 7, 1966, the Corporation redeemed said stock certificate from Farmers State Bank, and charged the cost of

redemption on the corporate books to Carl;

13. That on or about November 22, 1965, at a purported meeting of stockholdres in Phoenix, Arizona, the following persons were present: Carl, Mabel, Linda, Larry, Irene, Connie by proxie through Carl and Mabel, and Gilbert by proxies through John Savoy, a Phoenix attorney, who also purported to represent Irene and Gilbert at that meeting; Treadaway and Krull were also present as business consultants to Carl, Mabel and the Corporation; the Keierlebers objected to the meeting as being improperly called, and it was adjourned to make a determination, and then re-convened at 4:00 o'clock p.m., with Carl, Mabel, Linda, Larry, and Treadaway and Krull present, and the stock of Connie represented by Carl and Mabel; that descussion was held with respect to the disparity in

proportionate value of the property originally conveyed by Keierlebers and Iversons to the Corporation in return for paid up stock as relected in the First Issue; that a Second Issue of stock was then authorized; that on or about January 3, 1966, certificate number 18 was issued to Larry for 593 shares, certificate number 20 was issued to Carl of 657 shares, that certificate number 21 was issued to Mabel for 654 shares; that on or about March 1, 1966, certificate number 22 was issued to Carl as pledgee of Connie, for 1,009 shares; that all of these shares are referred to as the "Second Issue"; that no consideration was paid the Corportion for issuance of any shares of the Second Issue; that with the issue of certificate number 22, the maximum 5,000 shares authorized by the articles of incorporation was exceeded by 436 shares; that

directors were elected for the ensuing year, comprised of Carl, Mabel, Larry, Treadaway and Krull.

14, That on or about January 30, 1967, at a meeting of the stockholders attended solely by Carl, Krull and Treadaway at Dillon, Montana, duplicate stock certificates of the Corporation, numbers 12 and 13, were ordered cancelled and all shares of of the Second Issue were ordered cancelled; that at said meeting, a "Third Issue" was authorized, consisting of certificate number 23 to Treadaway in the amount of 1,239 shares, certificate number 24 to Krull in the amount of 1,238 shares, certificate number 25 to Carl in the amount of 60 shares, and certificate number 25 to Carl in the amount of 60 shares, and certificate number 26 to Mabel in the amount of 58 shares; that the certificates of the Third Issue which were issued to Carl and Mabel were purportedly

in Lieu of certificates representing the same number of shares of the Original Issue; that all of said stock of the Third Issue was issued without any consideration; that the meeting was not held at the principal place of business; that Treadaway and Krull owned no shares of incorporation provided for three directors of the Corporation; that the three directors of the Corporation, prior to the election of Krull and Treadaway were Larry, Carl and Mabel; that Krull first acted as a director of the Corporation on January 4, 1965, and Treadaway first signed the minutes of the Corporation as a director on November 22, 1965; that they then became the fourth and fifth directors of the Corporation; that other than the meeting on January 30, 1967, in Dillon, Montana, there has been no stockholdre's meeting of the Corporation in the State of Montana since its original incorporation in 1964;

15, That at all times since January 4, 1965, and November 22, 1965, Krull and Treadaway respectively, have held themselves out to be directors and officers of the Corporation;

16. That ownership of stock in the Corporation, including presently entitled stockholders, former stockholders, former stock certificate numbers, former number of shares and present number of shares in the Corporation, consistent with the findings herein set forth, is as described and set forth in Exhibit A annexed hereto and by this reference incorporated herein;

17. That at all times herein mentioned. Treadaway and Krull have acted as the managing officers of the Corporation, and as directors, and for all practical purposes, have exclusively controlled the operations of the Corporation up until the appointment of a receiver pendente lite

by this Court in November of 1970;

18. That no independent audit has been made of the books of the Corproation since 1965; that no internal controls have been maintained with respect to the books of the Corporation, nor any supporting receipts nor vouchers;

19. That since the inception of the Corporation until June 30, 1969, the gross income of the Corporation was in excess of $715,000.00 but there is no way from the books of the Corporation to determine how much in excess of that amount the gross income was;

20. That other than a bank account of the Corporation commenced at the inception of the Corporation, and authorized by the directors, and long since closed, no Corporation banking account has been maintained; that all receipts of the Corporation have been deposited in over a dozen

different banking accounts in the names of either Krull, Treadaway, Treadaway and Krull, or in the name of other corporations controlled by Treadaway and Krull; that the funds of the Corporation were commingled with the funds of the other corporations' or with the funds of Krull, Treadaway, or Treadaway and Krull; that the bank accounts of the Corporation, none of which were in the corporate name, are as follows:

1. Trustee account, Montana Bank, Great Falls,
2. Continental Bank, Phoenix, Arizona,
3. Farmers State Bank, Conrad, Montana,
4. Trustee account in Las Vegas, Nevada,
5. Trustee account in the Pioneer Bank in Phoenix, Ariz.,
6. Acocunt under 2929 Corporation in Pioneer Bank of Phoenix, Ariz.,

7. Space and Materials Corporation account in Pioneer Bank of Phoenix, Arizona,

8. U.S. Pozzolan corporate account in Pioneer Bank, Phoenix, Arizona.

9. Central Bank of Montana, Great Falls, Montana,

10. First West Side Bank of Great Falls, Montana,

11. Three personal accounts of Krull, one in Chicago, Phoenix and Grants Pass, Oregon,

12, Midland National Bank in Billings, 13 Thunderbird Bank in Phoenix (Treadaways account).

21. That the books of the corporation reflect that disbursements were made from said bank accounts for the Corporation, for Treadaway,

personally or otherwise, for Krull, personally or otherwise, for other individuals, personally or otherwise, and for the personal expenses of the members of Treadaway's family; that no accounting has been made available of the banking acounts referred to, i.e., other than the books of the Corporation, solely maintained by Treadaway and Krull, and there is no way to determine what has gone into the banking accounts that were used, nor what has gone out;

22. That the books and records of the Corporation cannot be successfully audited at this time, or at any of the times herein mentioned, because there is no cash account against which the cash receipts journal and cash disbursements journal can be balanced, and no corporation checking account against which such reciepts and disbursement may be balanced,

nor are there any corporate sources at which the recorded receipts and disbursements may be confirmed; two certified public accountants, utterly competent, candid and excellent witnesses, working independently and from independent accounting firms, were unable to bring the books of the Corporation into balance at any time subsequent to the opening of the books of the Corporation;

23. That Gilbert was adjudicated bankrupt in January, 1966, and Carl is, and has been, without individual assets, and is, and has been, employed as a gardener at a meagerly salary; that at the inception of the Corporation there was due the Corporation from Gilbert, Carl, and Gilbert and Carl jointly, a total of approximately $150,000.00; that at present the accounts receivable from Gilbert and Carl individually

and jointly by various processes including advancing funds to them, assuming obligations in their behalf, or adjusting their accounts, has increased so that by June 30, 1969, Gilbert and Carl collectively owe the Corporation approximately $425,000.00; that these accounts receivable are carried as assets on the records of the Corporation;

24. The Corporation had at its inceoption 5500 acres of cropland, machinery to farm the smae, and during the five-year period until June 30, 1969, enjoyed gross income in excess of $715,000.00; that at mid-trail, in December, 1970, the Corporation was wholly without operating funds;

25. The Keierleber land, 1120 acres, was sold (without a stockholder's meeting) at a loss, the loss was charged to Gilbert's account

receivable with the Corporation so that the loss is reflected in the corporate records as a corporate asset due from a bankrupt, and the loss was not then used for tax purposes;

26. All of the farm machinery and equipment has been sold and disposed of, with no accounting of the proceeds, and the Corporation had had to emgage in custom farming of its remaining acreage;

27. That in July, 1968, approximately 4500 acres of land of the Corporation (th Iverson land) was sold to Ralph Bouma on a contract for Deed (hereinafter referred to as the Bouma contract) for a pruchase price of $734,500.00; taken in trade as part of the downpayment from Ralph Bouma was 1440 acres of land located in Teton County (hereinafter referred to as the Aguwam place) at an allowance of $150.00 per acre;

that six weeks later the said Aguwam place was sold by Krull and Treadaway for the Corporation to the father and brothers of Ralph Bouma at a price of $92.50 per acre, resulting in a loss of $82,800.00; the said relatives of Ralph Bouma sold the said Ag wam property one year later at $120.00 per acre;

28. That pending, at the time of the Bouma contract, was a law suit by the Great Falls Iron Works against Treadaway and Krull, in Cascade County, based upon a tort and claiming compensatory and exemplary damages; that the suit primarily concerned representations made by Treadaway and Krull in the purchase of grain elevator equipment from the Great Falls Iron Works, that was erected on the Bouma contract land; that in the contract for deed with Bouma, the Corporation (i.e., Treadaway

and Krull) made reference to the suit of the Great Falls Iron Works, as a lien in the amount of $24,328.00, which the Corporation would pay, or would give credit to Bouma on his payments, if he were stuck with the loss; that Treadaway and Krull negotiated a settlement with the Great Falls Iron Works by the return of the removable grain elevator equipment for a credit of $14,328.00, and by promising to pay for a credit of $14,328.00 and by promising to pay $10,000.00 additional over a three-year period out of the receipts from the Bouma contract for deed; that in order to get the removable grain elevator equipment from the Bouma contract land, the Corporation (Treadaway and Krull) gave credit to Bouma on the contract of the amount of $24,328.00;

* 29. That the Bouma contract, after the downpayment, assumptions of mortgages, etc., went into excrow with the Central Bank of Montana, with $333,830.07 to be paid, with interest at the rate of 5 per cent per annum from and after September 1, 1968; that the contract for deed and the escrow agreement both provided that 22 percent of this blaance was to be paid to Treadaway, 22 percent to Krull, and 56 percent to the seller; that the 44 percent to be paid to Treadaway and Krull was represented by Treadaway and Krull, in their testimony, and in the contract for deed, to be in satisfaction of a morgage by the Corporation to them in the mount of $125,000.00; that no where in the books of the Corporation is there any reference to the $125,000.00 mortgage or debt, or its satisfaction;

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*Indicates paragraph amended by court's grant of an exception.

30. That the Bouma contract is being paid in annual payments, to the escrow agents, the Central Bank of Montana; that these Bouma payments have been subjected to some ten assignments to various persons holding notes executed by Krull and Treadaway for the Corporation; that some notes run to attorneys for services, rendered primarily in representing Carl and Mabel as individuals, and not limited to services rendered the Corproation; some notes are for obligations assumed by the Corporation; some notes are for obligations assumed by the Corporation for Carl and Mabel; and as of the date of these finds the unpaid total of these assignments is in excess of $50,000.00.

31. Richard and Earl Milan performed work on corporate property at Ledger, Montana, for which they were not paid, and for which they

filed wage claims in the amount of $1,770.00; the Corporation did not defend the wage claims, and judgment was obtained, and satisfied by the Corporation in 1968 for $2,700.00; Treadaway and Krull were managing the Corporation throughout the entire transaction;

31. Gilbert took bankruptcy on January 24, 1966, Treadaway and Krull filed personal claims against Gilbert, but caused no claim to be filed by the Corporation, although the Corporation then claimed $248,000.00 due from Gilbert, and $119,000.00 due from Gilbert and Carl;

32. As of June 30, 1969, the books of the Corporation reflected 5000 shares of Gold Reserve mining stock as an asset of the Corporation; it was transferred to the Corporation in the name of Treadaway and Krull, and was never retransferred by Treadaway and Krull to the

Corporation ; it is not now listed on the corporate books at all, nor is any reason assigned for its absence;

33. The Gulick-Treadaway Foundation account has been carried as an asset of the company for four years, in the amount of $20,000.00; it does not exist;

34. Space and Materials Company is reflected in the corporate bookds as an account asset of $91.88; it is a defunct Arizona corporation, and the account should have been deleted and has not been;

35. "2929 Corporation" has $6,100.00 invested in it by this Corporation, and is carried as an asset in that amount of the Corporation; Treadaway is president , Krull is secretary treasurer; it is defunct;

36. U.S. Possolan, a Nevada Corporation, with Treadaway as vice-president and Krull as secretary-treasurer, owes this Corporation 43,492.78, but this corporation has no evidence of indebtedness;

* 37. That in May of 1969, Treadaway and Krull agreed to sell the Corporation's Rieman proeprty to Dr. Donald Fletcher of Conrad, and received a down-payment of $2,000.00; $1,000.00 for the down-payment was by check, May 9, 1969, payable to Treadaway and Krull, and cashed at a safeway store in Arizona; a second check of $1,000.00, July 9, 1969, was payable solely to Krull, and was deposited in a bank account of Krull's; Fletcher has received no deed nor the $2,000.00; Treadaway and Krull subsequently entered into an agreement to sell the Rieman land to Arnold Rohrer;

38. That in December, 1969, Treadaway and Krull entered into a lease with Arnold Rohrer of the gravel on the Rieman land, and at the same time, entered into a contract for the sale of this land to Arnold

* Indicates paragraph amended by court's grant of an exception.

Rohrer; the contract, exhibit number 38, states that Krull and Treadaway claim jointly and severally an assignment of tax deed interest superior to that of the Corporation; they paid the taxes, as reflected in exhibit number 39, in their own names or in the name of Krull, at a time when they were the managers of the Corporation, and they received a tax deed to the property; they received in excess of $19,000.00 for this property, which is now gone; the lease of the gravel and the sale of the land was conducted subsequent to the injunctive order of this Court;

39. TCK Corporation, is a Nevada corporation, in which Treadaway and Krull have a two-thirds interest, and this Corporation has a one-third interest; the corporate books reflect the Corporation

owed TCK $2,480.39; TCK sold land in Nevada for $3,000.00 in cash, of chich $250.00 was put in a joint account of Krull and Treadaway, and $2,000.00 went to Krull and was charged against his management contract with this Corporation; the only remaining assets of TCK are a car and a pickup; the car is a 1966 Lincoln, kept in a garage at Treadaway's house, and the truck is used on Treadaway ranches in Arizona; TCK has no property in Arizona other than the car and the pickup;

* 40. Treadaway and Krull agreed to sell corporate real estate property near Cutbank, Montana, to Herman Bouma in December of 1969, receiving at the time the sum of $1,000.00, as a down payment thereon; $25.00 was paid to the Federal Land Bank on behalf of the Corporation, and the rest was put in a joint banking account of Treadaway and Krull

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* Indicates paragraph amended by court's grant of an exception.

this was subsequent to the injuctive order of this Court forbidding transfer of property;

41. That when the Corporation sold the Iverson land, as aforesaid, to Ralph Bouma (4520 acres), on a contract for deed, in July 1968, the Corporation reserved the mineral rights; a deed to the mineral rights was given to Ralph Bouma on August 8, 1970, for which the Corpration received a credit of $4,520.00, the total price; Ralph Bouma forthwith leased the property to Henry Tower at a dollar and acre per year, i.e., Ralph Bouma leased the mineral rights for one year for as much as he paid for the whole grant; this transfer was also made subsequent to this Court's injunctive order restraining any such transfers;

42. That the Agawam land, received as a part of the down-payment

on the Bouma contract for deed, was sold for $133,200.00 plus $3,590.00 of Federal Land Bank stock, in September, 1968; Treadaway and Krull paid out $3,250.00, $2,000.25 in taxes, $14,100.00 on a mortgage to Capp Homes, and $71,800.00 to Federal Land Bank; there was a net remaining of $45,639.45 in cash, part of which was put in the Central Bank of Montana under Krull's name, and part of which was put in the Phoenix Bank under Treadaway's name; it is all spent now;

43. Treadaway and Krull sold the Keierleber property near Brady, Montana, to Keith and Wilma Dory in February 1967; they carried the land on the books at $153,910.02 and the buildings at $34,179.29 for a total of $188,089.31; they sold it for $130,000.00; there was no meeting of stockholders to authorize the sale; there were 1100 acres

involved, and the land sold for $118.18 per acre; the corporate books reflect that $23,910.02 was charged back to Keierleber as the difference between the land and the sale price, on the basis that he overinflated the value when he put the land in the Corporation, and the building loss, amounting to $5,965.52, was similarly charged back to Keierleber; Keierleber had taken bankruptcy in January, 1966; the carge back to Keierleber had been carried as a corporate asset;

44. The corporate stock is not listed on any stock exchange, nor on any markets; the original stockholders were the Iversons and the Keierlebers plus a daughter-in-law of the Iversons, and Darrell Brown, the CPA, the latter two holding one share of stock each;

45. Farmers State Bank is the only bank where the Corporation is authorized to bank, under resolution of August 19, 1964, which had never

been amended;

46. There was no stockholders meeting authorizing the sale of the Iverson property to Bouma, the Dory Sale, the Agawam sale, or the Cutbank sale;

47. That a meeting of stockholders was called for January 30, 1967, at Dillon, Montana, as aforesaid; that Krull was asked on the witness stand if he were sware of the United Bank's claim against the stock of Carl and Mabel at the time of the meeting in Dillon, and refused to answer the question on the grounds that the answer would tend to incriminate him in a felony;

48. That on October 20, 1969, the Corporation loaned $500.00 to Gilbert; that Gilbert had taken bankruptcy in January of 1966; and on October 20, 1969, the books of the Corporation reflect that Gilbert

was indebted to the Corporation in the amount of $248,000.00;

49. That Farmers State Bank became a stockholder as a result of foreclosure on March 16, 1967, requested of the Corporation a statement of affairs on March 26, 1967, gave notice to the Corporation of the status of Farmers State Bank on March 27, 1967, and made demand for a stockholders meeting on juner 21, 1967;

50. That the interest on the Bouma contract for deed was pre-computed over the life of the contract at $214,484.60, and is carried as an asset on the books of the Corporation as an account receivable; that by the terms of the contract for deed itself, 44 percent of the proceeds, including the interest, goes to Treadaway and Krull, and not to the Corporation;

51. That the financial sheet of June 30, 1966, of the Corporation with a balance sheet and profit and loss statement, reflects management fees to Treadaway and Krull of $57,718.58, which brought the management fees current; that Treadaway and Krull caused to be issued to themselves, in January 1967 in Dillon, under the "Third Issue" of stock, almost half the stock in the Corporation, for management services; that this would be for six month's work;

* 52. That Treadaway and Krull purported to cancel the 118 shares owned by Carl and Mabel , in June, 1970, after this action was commenced, and after this Court had ruled in August of 1969 that United Bank had acquired these shares at sheriff's sale; that the cancelation is a notation of the stock transfer book; that there are no minute entries reflecting the cancelation of the shares, i.e., no board meeting;

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* Indicates paragraph amended by court's grant of an exception.

53. That the corporate stock book stubs reflect a written lien in favor of the Corporation on the 118 shares of stock of Carl and Mabel, pursuant to Section 15-642, R.C.M. 1947; that Section 15-642, RCM. 1947, was repealed in 1963, prior to the inception of this Corporation;

54. That the effort to cancel stock at the Dillon meeting in Janaury, 1967, would have canceled stock upon which there were attorney's pledges, the sheriff's execution to United Bank, the Trustee in Bankruptcy in the Keierleber estate, and the stockholders themselves, Mabel, Connie, and Larry, without notice nor authorization;

55. That on August 31, 1966, the Corporation assumed a debt of Carl to Farmers Bank of $86,794.42; that there were expenses of over $8,000.00 (legal fees) also paid by the Corporation, but not charged to Carl; this $86,794.42 was then, and still is, reflected as an asset of the Corporation;

56. That the minutes of a special meeting of the stockholders held on August 19, 1964, specifically state that the stock by the new subscription into this Corporation and by the transfer from the now dissolved Carl Iverson, Inc., Corporation, in amounts as held and by the same holders as in that corporation now total as shown thereunder, and constitutes a total issue, namely, 2523 shares of stock, (referred to here as the Oringinal Issue); that Darrell Brown advised Carl at that time of the disproportion between his shares and the assets he put into the corporation, and Gilbert's shares and the assets he put into the Corporation;

57. That up to June 30, 1969, the cash withdrawals of the Corporation reflect that Treadaway received $152,283.94, Krull received $65,070.46

$88,577.54 went to one or the other or both, and the wife of John Treadaway received $9,753.50, a total of $315,685.44 (see exhibit 55D and 55D-26); that Treadaway and Krull withdrew an additional $40,615.33 from July 1, 1969 to December 31, 1969; there is no entry in the minute of the Corporation establishing any salary to Treadaway or Krull;

58. That exhibit number 55F reflects the management expenses; that many of the expenses are self-explanatory, and had nothing to do with the Corporation, e.g., sehedule number 2, page 3, line 2, check to the Arabian Horse Association; that no rebuttal was made to this exhibit;

59. That exhibit 74 reflects the expenses incurred by the Corporation for traveling, under interstate operating account; that the unrebutted

testimony was that it is unusually large for a farm operation; that the expenses incurred as reflected therein are not suported by documents just one-line notations, e.g. line 11 of page 3 of the exhibit reflects "10-30-65 CD-7" with the amount of $10,167.37... at the cash disbursements journal at that page, it shows it was spent, but by whom nor to whom, only that it was from the Corporation ; that the total amount in five years is $21,757.58;

60. That exhibit number 81 reflects the schedule of capital surplus, and under credits to captial surplus reflects a total of $303,841.15; that the undisputed testimony is that none of these items belongs under capital surplus; that exhibit number 82 reflects the compensation paid to Krull and Treadaway, and under total cash and

officers salary reflects $196,748.55; they also received, or will receive, 44 percent of the Bouma contract for deed ($333,830..07) which comes to $146,885.23 plus interest; they also received 2477 shares of corporate stock at par, or $247,700.00; (they have not received anything under the Bouma contract, as yet, and the stock issued to them was invalidly issued) the $196,748.55 was also included in plaintiff;s exhibit 55D and 55D-26, reflecting total cash withdrawals, heretofore mentioned;

61. That the Corporation had a claim against the Marshall land and Cattle Company in Colorado; the the Marshall Land and Cattle Company went into bankruptcy, and a claim was filed on behalf of the Corporation by Treadaway and Krull; that this claim was orignally carried on the books of the Corporation in the approximate sum of $30,000.00 as a

"right of contribution", was subsequently increased by approximately another $30,000.00, and is now carried in the amount of $92,313.47, from which $7,500.00 has been recovered; that the balance of $84,913.47 is reflected as an asset of the corporation; that there is no possibility of any recovery by this Corporation;

62. That exhibit number 79, unrebutted, reflects a total income of $715,217.06 by the Corporation, and net losses of $124,526.63, or a net income of $590.690.43, from August 17, 1964, through June 30, 1969;

63. That exhibit 83 reflects the net asset value of the Corporation available to the stockholders on June 30, 1969, and is unrebutted; that it reflects the book value of assets on theat date at $948,034.12 from which is deducted the amounts due from Gilbert, Carl, and Gilbert and Carl, in the amount of $424,968.17 as uncollectable, deducts the right

of contribution on the H.C. and Cora Marshall land of $84,813.47 as impossible to recover, deducts the 44 percent of the Bouma contract that has been given to Krull and Treadaway in the amount of $146,885.23 deducts the asset valuations assigned to Space and Materials, 2929 Corporation, U.S. Pozzolan, Gulick-Treadaway Foundation, and Gold Reserve mining stock, in the total amount of $30,211.26, as worthless assets, deducts an itemized list of remaining liabilities to third parties in the total amount of $100,340.63; that the net assets of the Corporation available to stockholders on Juner 30, 1969, is $160,815.36; that the same exhibit approaches the net asset value of the Corporation available to stockholders on June 30, 1969, from another direction, i.e., by recapitulation of the remaining assets; that the net

asset value comes out the same, $160,815.36; that the difference between the book value and the true value of the corporate assets on June 30, 1969, is $787,218.76;

64. That the Corporation filed a claim in bankruptcy of the Marshall Land and Cattle Company in Pueblo, Colorado; that the claim was filed on behalf of the Corporation by Treadaway and Krull; that Krull testified that he spent three to four months there, in Pueblo Colorado, on behalf of the Corporation, and many, many hours; that in response to inquiry, he testified that he does not know the result of his actions, nor that of his attorneys with respect to the claim;

65, That United Bank incurred $140.00 expense in bringing a witness from Pueblo, Colorado,to prove its name and corporate existence; that defendant John Treadaway refused to admit these facts, upon

request; that defendant Treadaway had inquired into these matters prior to the hearings; that defendant Treadaway offered no proof to the contrary;

CONCLUSIONS OF LAW

1. That the correct corporate name of United Bank at the time of the commencement of Cause No. 8221, was Arkansas Valley Bank; that since commencement of said action, the name of United Bank has been changed to and its correct corporate name is United Bank of Pueblo; that said United Bank was at all pertinent times a banking corporation organized and existing under the laws of the State of Colorado, with principal place of business at Pueblo in said State;

2. That at all pertinent times Farmers Bank was a Montana banking corporation, organized and existing under the laws of the State of Montana, with its principal place of business at Conrad, Montana;

* 3. That the Corporation is a Montana Corporation organized and existing under the laws of the State of Montana, with its stated principal place of business at Ledger, Montana, with certificate of incorporation issued by the Secretary of State on the 17th day of July, 1964; that it was, and is, capitalized for $500,000.00 divided into five thousand shares of a single class of common stock of $100.00 par value each, and is organized to be governed in its business by a board of directors consisting of three persons empowered to elect officers to perform the executive functions of the corporation; that unless otherwise specifically recited, all references to capital

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* Indicates paragraph amended by court's grant of an exception

stock hereinafter contained, are to capital stock of the Corporation that said corporate stock is not listed on any stock exchange, nor on any markets, and is not a stock commonly recognized as a medium for investment;

4. That on or about August 19, 1964, a total of 2,523 shares of stock of the Corporation were issued to the following named persons in certificates numbered and representing shares in the Corporation (hereinafter referred to collectively as the "oringal issue") as follows:

STOCKHOLDER	CERT. #	NO. OF SHARES
Larry C. Iverson	1	463
Linda M. Iverson	2	1
Mabel Iverson	3	58
Mabel Iverson	4	450

STOCKHOLDER (cont'd)	CERT. #	NO. OF SHARES
Irene A. Keierleber	5	300
Gilbert F. Keierleber	6	300
Connie Inverson Fulton	7	440
Darrell L. Brown	8	1
Carl O. Iverson	9	450
Carl O. Iverson	10	60
	Total Shares	2,523

5. That on or about November 22, 1965, the following certificates were issued to replace lost certificates representing share in the Corporation:

STOCKHOLDER	CERT. #	ISSUED TO REPLACE	NO. OF SHARES
Irene A. Keierleber	11	5	300

STOCKHOLDER (cont'd)	CERT. #	ISSUED TO REPLACE	NO. OF SHARES
Mabel Iverson	12	3	58
Carl O. Iverson	13	10	60

That the ownership of said duplicate shares was the same as the ownership fo original shares, as hereinabove set forth;

6. That the one share each of stock of Linda Iverson and Darrel Brown have been surrendered to the Corporation and are treasury shares;

7. That the 463 shares of stock of Larry C. Iverson were pledged to Farmers State Bank, and redeemed by the Corporation prior to March 7, 1966, and retired as treasury stock; that the 600 shares of stock issued to Irene and Gilbert Keierleber were transferred to Stanley M. Swaine, as Trustee in Bankruptcy on January 24, 1966,

subject only to a pledge of Gilbert's 300 shares to the Farmers Bank; that certificate number 4, in the amount of 450 shares to Mabel, and certificate number 9, in the amount of 450 shares to Carl, were pledged to the Farmers Bank, and as a result of the pledged foreclosure, Farmers Bank became the owner of those 900 shares on or about March 16, 1967, subject to a redemption, by the Corporation of 182.7 shares , which were then retired as treasury stock, leaving the Farmers Bank 717.3.

* 8. That Connie Iverson Fulton is the owner of 440 shares, subject to a pledge to Carl and Mabel for the purchase price of said shares, which pledge was purchased by the United Bank, along with certificate number 10, for 60 shares to Carl, on July 21, 1966, at Helena, Montana,

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*Indicates paragraph amended by court's grant of an exception.

at a duly and regularly held sheriff's sale;

9. That the legal entities entitled to ownership of stock in the Corporation, having succeeded to ownership of the 2,523 stock issued by the Corporation in 1964 (the Original Issue) and the number of shares to which each legal entity is entitled, are as set forth in Exhibit A annexed to these finds of fact and conclusions of law, which exhibit is incorporated herein as fully as though set forth herein at length;

10. That the stock in the Corporation issued during 1966, as the Second Issue, is void, as being invalidly issued, for the reason that there was no consideration given for the Second Issue; that the Second Issue was in fraud of the rights of owners of successors in

interest of of the Original Issue, and in particular, in violation of the rights of Stanley Swaine as Trustee in bankruptcy and owner of the shares of stock of Gilbert and Irene, and in violation of the rights of Farmers Bank as a pledgee of many of the shares of the Original Issue; that whatever disproportionate issue resulted in the Original Issue of stock, the facts were then known to the parties who subscribed to that Original Issue, presumably accepted by all of them, and the recourse, if any, would only be to call in shares of stock issued to Gilbert and Irene, as being without adequate consideration, and not to issue additional stock to Carl and Mabel;

11. That the Third Issue of stock, at the Dillon meeting in Janaury, 1967, was void, for the reason that the issue was again

consideration, was in fraud of the rights of owners of successors in interest of stock or the original issue, and the stockholders meeting at which the issue was authorized was invalidly called in that notice to all stockholders was not given, the meeting was not held at the principal place of business, and the only stockholder present had no stock that was not pledged;

12. That the assets of the Corporation have been misapplied and wasted by Krull and Treadaway, whose acts as persons in control of the corporation have been illegal and fraudulent; that they represented themselves to the directors fo the Corporation as business and management consultants, when they knew that they were not qualified as such, or knew that they did not know if they were qualified as such; that they have caused the funds of the Corporation to be commingled

with their own personal accounts; that they have kept no accurate records of the Corporation, no internal controls, and have required no audit of the books for over five years; that they have withdrqwn funds from the corporation to pay for debts owing to them from stockholders, and assigned the claim against the stockholders to the Corporation, as an asset of the Corporation, knowing that the asset was worthless, and knowing that the Corporation cannot make loans to a stockholder; they have acted as directors of this Corporation when the articles of corporation limited the number of directors to three, who have always been Larry, Carl and Mabel; that in addition to adding themselves to the board of directors, in excess of the number of directors that the Corporation could legally have, all stockholders

meetings, after the inception of the Corporation, have been out of the State of Montana, i.e., illegally held, and as a consequence, the stockholders could not legally elect any further directors, much less Treadaway and Krull; that they have caused themselves, along with Carl, to be appointed by the stockholders as the "executive" committee, without authorization from the articles of incorporation, and they have conducted all of the affairs of the corporation, with or without stockholders consent or knowledge that they have sold, or contracted to sell, all of the assets of the Corporation without stockholder consent; that they have carried worthless assets on the books of the Corporation for the purpose of inflating the book value of the Corporation; that they have diverted funds from the Corporation into other corporations,

were principally owned and controlled by Treadaway and Krull, for no valid consideration; that they have failed to pay legitimate debts of the Corporation, thereby jeopardizing the assets ofthe Corporation or causing the debt to be increased as a result of legal action, and they have caused to be assumed by the Corporation debts of individuals which are not obligations of the Corporation, and these debts are principally those of stockholders, which is contrary to the law prohibiting loans to stockholders; at the Corporation's inception, it was a solvent, going concern, with income-producing assets worth approxiamtely $1.4 million, but during the approximatley five years of the administration of the affairs of the Corporation by Treadaway and Krull, the Corporation's assets have shrunk by approximately $1.2 million through losses, poor management, withdrawals and mis-

appropriation of assets, by Treadaway and Krull, and this does not include $715,000.00 of gross profits, at least, received by the Corporation;

13. That the compensation received by Krull and Treadaway for their services as managers, officers or directors of the Corporation is wholly in excess of and disproportionate to the value of any services rendered by them to the Corporation; that in view of the misapplication and waste of assets and the illegal and fraudulent acts of Krull and Treadaway, their services to the Corporation are not only deemed to be valueless, but well deserve the attention of a grand jury;

* 13-A. That the attempt of Teradaway and Krull to reserve to them-

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*Indicates paragraph inserted by grant of Rule 59 motion

selves from the Bouma Contract (described at paragraphs 27, 28, 29, 30, 41 and 50 of the findings of fact) 22% each, for a total of 44% of sums payable upon the Bouma contract (as described at paragraphs 29 and 50 of the finings of fact), in respect of the sale of land belonging to the Corporation is unlawful, void, and Krull and Treadaway should be adjudged as having no interest therein;

14. That the defendants Treadaway and Krull are exceptionally likable and personable, courteous to the Court, and a pleasure to have in court; that their testimony is totally incredible and unworthy of belief;

15. That the United Bank, the Farmers Bank, and the Trustee are entitled to allowance of an attorneys fee, and reimbursement of their

costs and expenses including costs advanced by United Bank for the Receiver pendente lite, payable from the assets and funds recovered for the Corporation for the benefit of the stockholders of the Corporation; that the Court should reserve and retain jurisdiction herein for the purpose of determining in subsequent proceedings at an appropriate time the nature extent and values of such assets and funds recovered and the reasonable amount of the attorneys fee, costs and expenses allowable to United Bank, Farmers Bank and the Trustee;

16. That the defendant, John C. Treadaway is specifically liable to the United Bank in the sum of $140.00 to defray the cost of bringing to Montana witness Arlo Beeman from Pueblo, Colorado, whose trip to Montana was required due to the unreasonable refusal of said defendant to make admission of the name and existance of plaintiff, United Bank

of Pueblo;

17. That it is necessary and proper that a receiver be appointed to wind up the affairs of the Corporation for the purpose of accomplishing liquidation and dissolution with all deliverage speed according to the procedures established in Title 15, RCM, 1947; that after the receiver appointed hereunder has had an opportunity to ascertain the nature and extent of the assets which may be recovered for the Corporation and the nature and extent of liabilities of the Corporation, the question of liquidation and dissolution may be reviewed, prior to its accomplishment if, in the light of the receiver's findings, it is more reasonable not to liquidate nor dissolve the Corporation;

18. That the Corporation should be placed in receivership, and the appointment of George Campanella previously appointed as receiver

pendente lite should be confirmed and continued as the receiver of the Corporation; that the receiver should meet with the stockholders for the purpose of ascertaining and complying with their requests, consistent with the orders of this Court;

19. That an order should issue in accordance with these conclusions.

ORDER

From the foregoing findings of fact and conlcusions of law,

IT HEREBY ORDERED as follows:

1. That title to the stock of Larry C. Iverson, Inc., be and hereby is quieted in the following manner, to wit:

STOCKHOLDER	SHARES
UNITED BANK OF PUEBLO	118

STOCKHOLDER	SHARES
CONNIE IVERSON FULTON (subject to pledge to the United Bank of Pueblo for the purchase price at par value of $100.00 per share)	440
FARMERS STATE BANK OF CONRAD	717
STANLEY M. SWAINE, as Trustee in Bankruptcy of the Estate of Mabel Keierleber	300
STANLEY M. SWAINE, as trustee in Bankruptcy of the Estate of Gilbert Keierleber, (subject to a pledge to the Farmers State Bank of Conrad)	300
LARRY C. IVERSON, INC., (as treasury stock)	648
Total	2,523

2. That upon distribution of the assets of Larry C. Iverson, Inc.,

among stockholders, the pledges shall be honored, at the time of distribution.

3. That Larry C. Iverson, Inc., is placed in receivership and the appointment of George Campanella previously appointed receiver pendente lite, is confirmed and continued as the receiver of Larry C. Iverson, Inc., with his bond in the amount of $25,000.00 to be continued, and increased as the need should arise.

4. That the receiver is directed to gather together and take into custody the assets of Larry C. Iverson, Inc., entertain claims of creditors of Larry C. Iverson, Inc., publishing notice thereto as in the case of a probate estate, and he is directed to do all things necessary and desirable to effect the windup of the affairs of Larry

C. Iverson, Inc., including, but not limited to, such action as may be required to recover monies misappropriated from the Corporation by defendants Treadaway, Krull, Carl O. Iverson and Larry C. Iverson. He shall report his activities in narrative form to this Court, with a copy to all stockholders, at intervals of not to exceed 90 days.

5. This Court having adopted the form and procedure used in the case of probate estates with respect to publication of notice to creditors and this Court having all matters to do with Larry C. Iverson, Inc., within its jurisdiction, it is ordered that such creditors as may fail to prefect their claims by filing them with the receiver within the time limited by law for filing as in the case of probate estates shall be barred and enjoined by this Court from ever after

raising such claim or claims. It shall be the duty of the receiver to petition the Court for such injunction orders at the appropriate time providing to any known creditors who are the subject of such petition, notice of the filing thereof, with leave to respond not later than 20 days after receipt of such notice.

6. Defendants John C. Treadaway, J. Milton Krull, Carl O. Iverson and Larry C. Iverson are removed and ejected from all positions or claims thereof on the board of directors of Larry C. Iverson, Inc., and from any offices they might have or claim in Larry C. Iverson, Inc., and they and each of them are hereby permanently restrained and enjoined from acting or interfering in any manner or matter whatever in the affairs of Larry C. Iverson, Inc. Any and all stock certificates

outstanding in their names are, by these presence, declared to be null, void, and of no force or effect whatever.

7. That the receiver is directed to issue stock certificates to those entitled thereto under the terms of this order, noting on the face thereof that such certificates are issued by him as receiver pursuant to this order, and subject to all terms and qualifications herein contained.

8. That the final decision as to the ultimate dissolution and distribution of the assets of Larry C. Iverson, Inc., among its stockholders is reserved by this Court until the receiver shall have had a reasonable time within which to put the affairs of the Corporation into order.

9. The jurisdiction of this Court is continuing and will continue

for the purpose of administration of the windup of the affairs of Larry C. Iverson Inc., and the interested parties may petition from time to time as matters may require.

10. That defendant John C. Treadaway is directed to pay United Bank of Pueblo the sum of $140.00 to defray the cost of bining to Montana witness Arlo Beeman from Pueblo, Colorado, but the liability of defendant John C. Treadaway to the Larry C. Iverson Inc., corporation is neither affected nor determined by the payment of this amount.

11. That United Bank of Pueblo, the Farmers State Bank of Conrad, and Stanley M. Swaine, are entitled to an allowance of an attorney fee, and reimbursement of their costs, and expenses payable from the assets and funds recovered for the Corporation; that the Court

reserves and retains jurisdiction herein for the purpose of determining in subsequent proceedings at an appropriate time, the nature extent and value of such assets and funds recovered, and the reasonable amount of the attorneys fees and expenses allowable; that a petition to that effect may be filed herein at any time hereafter by United Bank of Pueblo, Farmers State Bank of Conrad, or Stanley M. Swaine.

12. That the receiver, and the attorneys for the United Bank of Pueblo, the Farmers State Bank of Conrad, and Stanley M. Swaine, as officers of this Court, are ordered and directed to confer with the County Attorney of Pondera County with respect to reproducing the proof adduced in these proceedings tending to show the violations, by any persons, of Section 94-2101, et sea., RCM, 1947, and 94-2701, RCM, 1947,

and to that end, in the event that a transcript of these proceedings is made, for any reason, the receiver is authorized and directed to cause a copy of the transcript of these proceedings to be made to be delivered to the County Attorney of Pondera County.

** 12-A. That John C. Treadaway and J. Milton Krull have no right, title or interest in, to or under the Bouma contract in the findings of fact and conclusions of law herein described, and purported interest therein being unlawful and void as to said parties; that said defendants do not now have nor were they ever entitled to reserve and receive any proceeds from the Bouma contract; said defendants are hereby divested of any interest in and to said contract or the proceeds thereof and said defendants are liable to the Corporation for any sums received by

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** Indicates paragraph inserted by grant of Rule 59 motion.

said defendants as and for payment of any amounts reserved to them under the terms of said Bouma contract.

13. That as to all matters not of a continuing nature for the purpose of administration of the receivership, this order is a judgment, and is final upon entry.

DATED: April 17, 1971.

Robert S. Keller
District Judge

EXHIBIT A

Presently Entitled Stockholder	Former Stock-holder	Former * Cert. Number	Former No. of Shares	Present No. of Shares
	Mabel	(4)	450	
	Carl	(9)	450	
			900	
	Less Treasury Shares		182.7	
Farmers Bank				717.3
The Trustee (Subject to Farmers Bank pledge judg. v. Gilbert)	Gilbert	(6)	300	300
The Trustee	Irene	(5,11)	300	300
United Bank	Mabel	(3,12,26)	58	58

* In "Former Certificate No." column, where several numbers are included within the same brackets, they represent the various alleged duplicate issued certificates, all treated as being the same shares out of the

Exhibit A cont'd

United Bank	Carl	(10,13,25)	60	60
Connie (subject to pledge to United Bank)	Connie	(7)	440	440
Total presently outstanding shares				1,875.3
Treasury Shares	Carl/Mabel	(4) (9)	182.7	182.7
Treasury Shares	Linda	(2)	1	1
Treasury Shares	Darrell Brown	(8)	1	1
Treasury Shares	Larry	(1)	463	463
Total outstanding shares and Treasury shares, comprising total orginal issue				2,523

MEMORANDUM:

The question of receivership has not been legitimately in doubt by this court since the opeining days of hearings in October, 1970, when the defendants Treadaway and Krull testified to the commingling of funds in bank accounts, along with the total lack of internal controls or audits. The subsequent proof showing that a corporation valued at $1,400,000.00 (admittedly, a part of this valuation would be Carl's own estimate of the value of the lands, but subsequent sales did not show this estimate to off by any material amount), that was functioning as a money-making farm operation, reduced to one final asset, the Iverson land, which had been sold, with almost half of the sale proceeds to go to the managers, and over $50,000.00 of the remaining proceeds

already assigned to creditors, not to mention the fact that of the four original principal incorporators, two were in bankruptcy, one died in poverty, and one was working as a gardener for an apartment house in Phoenix, Arizona, at a meagerly salary, was overwhelmingly sufficient to show not only the need for a receivership, but its questionable in the Court's mind as to whether or not the receivership does not come too late.

It may well be that Treadaway and Krull were in good faith; I just don't believe it. It is incredible to me that men as accomplished as they were could keep books of a corporation of this size in such miserable shape,with no means of verifying any of the receipts nor their disbursements, with commingling of funds, with so many items of

personal expense charged off on the books and no way of ever accounting for the items of personal expense paid by the Corporation but not reflected in the books, with the alteration of records between the hearing in October, 1970, and January of 1971, the change in testimony, the transfer of corporate assets in the face of an injuctive order of the Court, and finally, the refusal by Mr. Krull to answer a legitimate question relating to his knowledge of the affairs of the Corporation, on the grounds that it might tend to incriminate him in a felony. There is just no question that the assets of the Corporation were utterly idssipated and only the persons who received any benefits from the dissipation were the defendants Treadaway and Krull, and their legal advisers.

The difficult legal problem dealt with the rights of the respective plaintiffs in stock, and this question devolved entirely upon the legitimacy of the Second Issue. All plaintiffs have agreed that the Third Issue was invalid, but they do not all agree as to the Second Issue. Clearly, as the minutes of the Corporation reflect, the Second Issue was made, allegedly, to correct a disproportionate issue of stock in the First Issue, i.e., Carl and Mabel had put so much more in the way of assets into the Corporation in the beginning than had Gilbert and Irene. The reason that the word "allegedly" is used is that at the time of the Second Issue; the Keierleber Bankruptcy was eminent, and the bulk of the stock of Carl and Mabel had been pledged i.e., this would also be a means of issuing unencumbered stock. What

ever the motivation for the Second Issue, Carl and Mabel, with full knowledge, had given all of their assets to the Corporation at its inception, and no longer had any assets to give to the Corporation for a Second Issue. If the intent at the inception was for a proportionate issue, and it developed that the assets of Keierleber did not measure up to what they had been purported to be (and the testimony is that Carl furnished all of the estimates in value, not Gilbert) then a determination would have to be made as to whether or not Gilbert misrepresented that which he was using to pay for his stock, and the authorities hold that the recourse is for the Corporation to call in that portion of Gilbert's stock that was not paid for, i.e. that which he used to pay for his stock was misrepresented. There is

no authority for issuing more stock, as was done, to equate the interest, and particualrly in the face of an agreement, which is a part of the minute book, made at the outset of the Corporation, between the Keierlebers and the Iversons, to the effect that there would be no further issue of stock other than in propørtion to the stock already issued. This becomes particularly relevant when the minutes reflect that the Keierlebers clearly did not consent to any Second Issue.

The conclusions of law submitted by the Farmers Bank indicate that they would prefer that the receiver first take stock of the whole situtation before the Court proceeds with an order for liquidation and dissolution, whereas the Untied Bank is asking for liquidation and

dissolution, but leaving the door open for the possibility of not liquidating or dissolving. The Court has chosen the latter course to that notice to creditors may be given, etc., so as to clearly define the assets and liabilities remaining. It is to be assumed that there will be additional contests over some of the claims, as well as some choices in action that the receiver will have to pursue. This should give all parties adequate time to arrive at agreement as to the question of ultimate liquidation and dissolution.

Defendants Krull and Treadaway called the attention of the Court to Section 5-518, RCM, 1947, relative to the disposition by a bank of acquired stock. It is their position that Farmers Bank should have sold their stock within six months, and in any event, within one year after acquisition. As such, they contend Farmers Bank cannot now

have any interest in these proceedings, i.e., that the action of Farmers Bank in even coninuing to hold the stock is ultra vires. The validity of the claim of Farmers Bank to ownership in stock in this Corporation has been contested throughout, to the extent that the Corporation has not issued stock to Farmers Bank, and has ignored all demand by Farmers Bank for recognition as a stockholder. As such, this Court take the position that Farmers Bank acquired no stock until the order of this Court, so determining, and even that date of acquisition would not be until this order is final, i.e., either affirmed on appeal, or no further right to appeal. The testimony clearly evidenced that the corporate stock is not listed on any exchange, nor on any market, and based upon United Bank's effort to sell

the stock, as well as the experience of Farmers Bank with the Corporation itself, there is no valid market, certainly not to the extent of the claim of Farmers Bank. Accordingly the, they would have one year form the date that this order is final to dispose of the stock. The question of whether or not the defendants Treadaway and Krull have standing to raise Section 5-518, RCM, 1947, is divided by the authority and the better-reasoned authorities, in the mind of this Court, treat the matter as being in a court of equity, where equity shall prevail. If the facts were to disclose that the acquisition of stock by pledge foreclosure was simply a means of investing in the capital stock of a corporation, it would be ultra vires, and could be raised by the debtor himself, much less other interested persons. In this particular case, there is no question in the Court's mind that the pledge was for

a security purpose, and that Farmers Bank has done all things possible to realize any value in the security, much less the amount of its claim.

The defendants Treadaway and Krull question the validity of the sheriff's sale involving the acquisition of stock by United Bank. Section 93-5810, RCM, 1947, provides that shares in any corporation, and all other property not capable of manual delivery, may be attached on execution, in like manner as upon writs of attachment. Section 93-4306, RCM, 1947, provides that the shares which the defendant may have in the stock of any corporation, together with the interest and profits thereon, and all debts due such defendant, may be attached, and it judgment be recovered, be sold to satisfy the judgment and execution. Section 93-4307, RCM, 1947, provides, in subdivision 4,

that investment securities as defined in the Uniform Commercial Code may be attached or levied upon only by seizure by the officer making the attachment or levy. It further provides that stocks or shares, or interest in stocks or shares, of any corporation, other than such investment securities, may be attached either by seizure or by leaving with the president, or to the head of the same, or the secretary, cashier, or other managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached in pursuance of such writ. Section 93-4308, RCM, 1947, provides that in addition to the method prescribed in paragraph 4 of Section 93-4307 for attaching stocks or shares or interest therein of any corporation or company, if the president or other head of the same or the secretary, cashier, or other managing agent thereof does not live in Montana or

or cannot be found within the said state, the Clerk of the Court shall make an order directing the writ to be served upon the Secretary of State of the State of Montana, or in his absence from his office, upon the deputy Secretary of State of Montana. When such order has been made, the said writ of attachment shall be served upon the Secretary of State or in his absence upon the deputy Secretary of State by leaving with him a copy of said writ and a notice that the stock or interest therein of the defendant is attached in pursuance of such writ.

United Bank did all that it was required to do by the statutes, and the law presumes that public officials did that which they were required to do. There was no evidence given to the effect that official duty was not followed in some respect, nor any evidence given to show that the United Bank's manner of acquisition of stock was improper.

Mr. Krull was asked if he did not, in fact, have notice of the acquisition of stock, by the United Bank, prior to the meeting of January, 1967, in Dillon, Montana, and Mr. Krull refused to answer the question on the grounds that it might tend to incriminate him in a felony. The only way that United Bank could prove that the Secretary of State sent notice to the Corporation was by asking a manager of the Corporation if he received notice.

The Uniform Commerical Code makes it clear that the stock in this Corporation was not an investment security as to United Bank or Farmers Bank, and the Sections of the Revised Codes of Montana just cited dealing with attachments ends any legitimate inquiry.

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